



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,812	07/22/2003	Richard Clark	019680-005700US	7777

20350 7590 03/14/2007
TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

EXAMINER

CASCHERA, ANTONIO A

ART UNIT	PAPER NUMBER
----------	--------------

2628

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/625,812	Applicant(s) CLARK ET AL.	
	Examiner Antonio A. Caschera	Art Unit 2628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10-26, 29-40 and 43-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 22-26, 29-35, 45 and 46 is/are allowed.
- 6) ☐ Claim(s) 1-7, 10-21, 36-40, 43, 44 and 47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 1-7, 10-21, 36-40, 43, 44 and 47 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In reference to claim 1, the language of the claim raises questions as to whether the claims (claims 1 and all dependent claims) are directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. Specifically, the “method for generating a luminosity compensated image” as disclosed in claim 1, is the abstract idea, which does not produce any tangible result(s). Further, although the claims do recite the limitation of “providing a user interface...” (see lines 9-10 of claim 1), the claims do not recite a limitation that produces a tangible result as seen by the current policies and procedures of the Office. Such a limitation, for example partly claimed in claim 3, would be one such as displaying the luminosity compensated pixel data on a display device. See MPEP 2106 IV (B)(1) and 2106.01 [R-5].

In reference to claim 36, the language of the claim raises questions as to whether the claims (claim 35 and all dependent claims) are directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter

Art Unit: 2628

under 35 U.S.C. 101. Specifically, the “computer program product comprising: a computer readable medium encoded with program code...” as disclosed in claim 36, is the abstract idea. These claims suffer from 35 USC 101 issues since the specification explicitly states that the computer readable medium, which is comprised within the program product, is defined as, “...various media, including magnetic disks, optical storage media, flash memory, and carrier signals for transmission via wired, optical, and/or wireless networks,” (see last 4 lines of paragraph 95 of Applicant’s Specification). Such, “carrier signals” are seen as nonstatutory according to the Office’s current policies and procedures and therefore the above claims suffer under 35 USC 101. See MPEP 2106 IV (B)(1) and 2106.01 [R-5].

Response to Arguments

2. The addition of claims 43-47 is noted.
3. Applicant’s arguments, see page 9-10 of Applicant’s Remarks, filed 12/11/06, with respect to the prior art rejections (under 35 USC 103(a)) of claims 1-7, 10, 12-26, 29 and 31-40 have been fully considered and are persuasive. The prior art rejection of the claims has been withdrawn.

Allowable Subject Matter

4. Claims 22-26, 29-35, 45 and 46 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

In reference to claim 22, the prior art of record does not explicitly disclose a multistage texture blending module configured to blend each of the image texture and the luminosity texture

Art Unit: 2628

onto a target surface having a shape, a user interface module configured to receive a user instruction modifying the shape of the target surface and updating the luminosity texture in response to the user instruction in combination with the further limitations of claim 22.

In reference to claims 23-26, 29-35, 45 and 46, claims 23-26, 29-35, 45 and 46 depend upon allowable claim 22 and are therefore also deemed allowable.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Antonio Caschera whose telephone number is (571) 272-7781. The examiner can normally be reached Monday-Thursday and alternate Fridays between 7:00 AM and 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kee Tung, can be reached at (571) 272-7794.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231


or faxed to:

571-273-8300 (Central Fax)

Art Unit: 2628

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (571) 272-2600.

aac


3/12/07

Antonio Caschera
Patent Examiner



KEE M. TUNG
SUPERVISORY PATENT EXAMINER